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HOUSE BILL NO. 171

Offered January 8, 2014

Prefiled December 23, 2013

A BILL to amend and reenact §§ 16.1-309.1 and 19.2-11.01 of the Code of Virginia, relating to crime victim rights; offenses by juveniles.

Patron—Farrell (By Request)

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-309.1 and 19.2-11.01 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-309.1. Exception as to confidentiality.

A. Notwithstanding any other provision of this article, where consideration of public interest requires, the judge shall make available to the public the name and address of a juvenile and the nature of the offense for which a juvenile has been adjudicated delinquent (i) for an act which would be a Class 1, 2, or 3 felony, forcible rape, robbery or burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 if committed by an adult or (ii) in any case where a juvenile is sentenced as an adult in circuit court.

B. 1. a. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a locally operated court services unit, may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the Commonwealth's attorney, the Department of Juvenile Justice, or a locally operated court services unit may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

b. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

2. After final disposition, if a juvenile (i) found to have committed a delinquent act becomes a fugitive from justice or (ii) who has been committed to the Department of Juvenile Justice pursuant to subdivision 14 of § 16.1-278.8 or 16.1-285.1 becomes a fugitive from justice by escaping from a facility operated by or under contract with the Department or from the custody of any employee of such facility, the Department may release to the public the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was committed, and any other information which may expedite his apprehension. The Department shall promptly notify the attorney for the Commonwealth of the jurisdiction in which the juvenile was tried whenever information is released pursuant to this subdivision. If a juvenile specified in clause (i) being held after disposition in a secure facility not operated by or under contract with the Department becomes a fugitive by such escape, the

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59 attorney for the Commonwealth of the locality in which the facility is located may release the
60 information as provided in this subdivision.

61 C. Whenever a juvenile 14 years of age or older is charged with a delinquent act that would be a
62 criminal violation of Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2, a felony involving a
63 weapon, a felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an "act of
64 violence" as defined in subsection A of § 19.2-297.1 if committed by an adult, the judge may, where
65 consideration of the public interest requires, make the juvenile's name and address available to the
66 public.

67 D. Upon the request of a victim of a delinquent act ~~which~~ *that* would be a felony *or that would be a*
68 *misdemeanor violation of § 16.1-253.2, 18.2-57, 18.2-57.2, 18.2-60.3, 18.2-60.4, 18.2-67.4, or 18.2-67.5*
69 if committed by an adult, the court may order that such victim be informed of the charge or charges
70 brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim"
71 shall be defined as in § 19.2-11.01.

72 E. Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant
73 to § 16.1-333 has been entered, provided (i) the order is not being appealed, (ii) the order has not been
74 terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

75 F. Notwithstanding any other provision of law, a copy of any court order that imposes a curfew or
76 other restriction on a juvenile may be provided to the chief law-enforcement officer of the county or city
77 wherein the juvenile resides. The chief law-enforcement officer shall only disclose information contained
78 in the court order to other law-enforcement officers in the conduct of official duties.

79 G. Notwithstanding any other provision of law, where consideration of public safety requires, the
80 Department and locally operated court service unit shall release information relating to a juvenile's
81 criminal street gang involvement, if any, and the criminal street gang-related activity and membership of
82 others, as criminal street gang is defined in § 18.2-46.1, obtained from an investigation or supervision of
83 a juvenile and shall include the identity or identifying information of the juvenile; however, the
84 Department and local court service unit shall not release the identifying information of a juvenile not
85 affiliated with or involved in a criminal street gang unless that information relates to a specific criminal
86 act. Such information shall be released to any State Police, local police department, sheriff's office, or
87 law-enforcement task force that is a part of or administered by the Commonwealth or any political
88 subdivision thereof, and that is responsible for the prevention and detection of crime and the
89 enforcement of the penal, traffic, or highway laws of the Commonwealth. The exchange of information
90 shall be for the purpose of an investigation into criminal street gang activity.

91 H. Notwithstanding any other provision of Article 12 (§ 16.1-299 et seq.), an intake officer shall
92 report to the Bureau of Immigration and Customs Enforcement of the United States Department of
93 Homeland Security a juvenile who has been detained in a secure facility based on an allegation that the
94 juvenile committed a violent juvenile felony and who the intake officer has probable cause to believe is
95 in the United States illegally.

96 **§ 19.2-11.01. Crime victim and witness rights.**

97 A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the
98 purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of
99 the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity;
100 and that their privacy is protected to the extent permissible under law. It is the further purpose of this
101 chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws
102 of the Commonwealth; that they receive authorized services as appropriate; and that they have the
103 opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections
104 agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible
105 under law. Unless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the
106 responsibility of a locality's crime victim and witness assistance program to provide the information and
107 assistance required by this chapter, including verification that the standardized form listing the specific
108 rights afforded to crime victims has been received by the victim.

109 As soon as practicable after identifying a victim of a crime, the investigating law-enforcement agency
110 shall provide the victim with a standardized form listing the specific rights afforded to crime victims.
111 The form shall include a telephone number by which the victim can receive further information and
112 assistance in securing the rights afforded crime victims, the name, address and telephone number of the
113 office of the attorney for the Commonwealth, the name, address and telephone number of the
114 investigating law-enforcement agency, and a summary of the victim's rights under § 40.1-28.7:2.

115 1. Victim and witness protection and law-enforcement contacts.

116 a. In order that victims and witnesses receive protection from harm and threats of harm arising out of
117 their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information
118 as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or
119 local program providing protection, and shall be assisted in obtaining this protection from the
120 appropriate authorities.

b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation, and that does not place the victim in close proximity to the defendant or the defendant's family.

2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of this title and on other available assistance and services.

b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of this title, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.

c. Victims shall receive notification, if requested, subject to such reasonable procedures as the Attorney General may require pursuant to § 2.2-511, from the Attorney General of the filing and disposition of any appeal or habeas corpus proceeding involving their case.

d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent (i) in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to the provisions of §§ 53.1-133.02 and 53.1-160 or (ii) when an accused is released on bail, if they have provided their names, current addresses and telephone numbers in writing. Such notification may be provided through the Virginia Statewide VINE (Victim Information and Notification Everyday) System or other similar electronic or automated system.

e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all agencies and persons having such duties must have current victim addresses and telephone numbers given by the victims. Victims shall also be advised that any such information given shall be confidential as provided by § 19.2-11.2.

4. Victim input.

a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim impact statement prior to sentencing of a defendant and may provide information to any individual or agency charged with investigating the social history of a person or preparing a victim impact statement under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.

b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding pursuant to the provisions of § 19.2-265.01.

c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the offense.

d. In a felony case, the attorney for the Commonwealth, upon the victim's written request, shall consult with the victim either verbally or in writing (i) to inform the victim of the contents of a proposed plea agreement and (ii) to obtain the victim's views about the disposition of the case, including the victim's views concerning dismissal, pleas, plea negotiations and sentencing. However, nothing in this section shall limit the ability of the attorney for the Commonwealth to exercise his discretion on behalf of the citizens of the Commonwealth in the disposition of any criminal case. The court shall not accept the plea agreement unless it finds that, except for good cause shown, the Commonwealth has complied with clauses (i) and (ii). Good cause shown shall include, but not be limited to, the unavailability of the victim due to incarceration, hospitalization, failure to appear at trial when subpoenaed, or change of address without notice.

Upon the victim's written request, the victim shall be notified in accordance with subdivision A 3 b of any proceeding in which the plea agreement will be tendered to the court.

The responsibility to consult with the victim under this subdivision shall not confer upon the defendant any substantive or procedural rights and shall not affect the validity of any plea entered by the

defendant.

5. Courtroom assistance.

a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the conduct of the criminal proceeding.

b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in accordance with §§ 19.2-164 and 19.2-164.1.

c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed preliminary hearing in accordance with § 18.2-67.8 and, if a victim was 14 years of age or younger on the date of the offense and is 16 or under at the time of the trial, or a witness to the offense is 14 years of age or younger at the time of the trial, that two-way closed-circuit television may be used in the taking of testimony in accordance with § 18.2-67.9.

6. Post trial assistance.

a. Within 30 days of receipt of a victim's written request after the final trial court proceeding in the case, the attorney for the Commonwealth shall notify the victim in writing, of (i) the disposition of the case, (ii) the crimes of which the defendant was convicted, (iii) the defendant's right to appeal, if known, and (iv) the telephone number of offices to contact in the event of nonpayment of restitution by the defendant.

b. If the defendant has been released on bail pending the outcome of an appeal, the agency that had custody of the defendant immediately prior to his release shall notify the victim as soon as practicable that the defendant has been released.

c. If the defendant's conviction is overturned, and the attorney for the Commonwealth decides to retry the case or the case is remanded for a new trial, the victim shall be entitled to the same rights as if the first trial did not take place.

B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological, or economic harm as a direct result of the commission of (a) a felony ~~or~~, (b) assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, *a violation of a protective order in violation of § 16.1-253.2 or 18.2-60.3*, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, *or* maiming or driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266, *or* (c) *a delinquent act that would be a felony or a misdemeanor violation of any offense enumerated in clause (b) if committed by an adult*; (ii) a spouse or child of such a person; (iii) a parent or legal guardian of such a person who is a minor; (iv) for the purposes of subdivision A 4 ~~of this section~~ only, a current or former foster parent or other person who has or has had physical custody of such a person who is a minor, for six months or more or for the majority of the minor's life; or (v) a spouse, parent, sibling, or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, sibling, or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i).

C. Officials and employees of the judiciary, including court services units, law-enforcement agencies, the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness assistance program. Each agency, officer or employee who has a responsibility or responsibilities to victims under this chapter or other applicable law shall make reasonable efforts to become informed about these responsibilities and to ensure that victims and witnesses receive such information and services to which they may be entitled under applicable law, provided that no liability or cause of action shall arise from the failure to make such efforts or from the failure of such victims or witnesses to receive any such information or services.